

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WARREN FREDRICKSON,

Plaintiff,

v.

U. BANIGA, et al.,

Defendants.

No. 1:20-cv-00398-DAD-EPG (PC)

ORDER DENYING PLAINTIFF'S MOTION  
FOR RECONSIDERATION

(Doc. No. 18)

Warren Frederickson ("plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On August 31, 2020, the assigned magistrate judge screened plaintiff's First Amended Complaint and issued findings and recommendations recommending that this action be dismissed for failure to state a claim. (Doc. No. 13.) The magistrate judge concluded that plaintiff "sufficiently alleged that he had a serious medical need" in connection with an injury to his foot, "and that certain nurses and doctors were aware of this need," but that he "has not sufficiently alleged that any of the nurses or doctors were deliberately indifferent to his serious medical need. (*Id.* at 7.) Plaintiff was provided an opportunity to file objections to the findings and recommendations and then granted an extension to do so. (*See* Doc. No. 15.) The extended deadline to file objections passed, and plaintiff did not file objections or otherwise responded to the findings and recommendations. The undersigned adopted the findings and recommendations

1 in full on January 8, 2021. (Doc. No. 16.)

2 On January 25, 2021, plaintiff filed a motion for reconsideration. (Doc. No. 18.) In that  
3 motion, plaintiff fails to explain why he did not timely file objections to the findings and  
4 recommendations. Even if plaintiff had provided such an explanation, he has failed to justify  
5 reconsideration of the January 8, 2021 order under either possible standard applicable to a motion  
6 for reconsideration.

7 “There are four grounds upon which a Rule 59(e) motion may be granted: 1) the motion is  
8 necessary to correct *manifest errors of law or fact upon which the judgment is based*; 2) the  
9 moving party presents newly discovered or previously unavailable evidence; 3) the motion is  
10 necessary to prevent manifest injustice; or 4) there is an intervening change in controlling law.”  
11 *Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (citation and  
12 internal quotation marks omitted).

13 Under Federal Rule of Civil Procedure 60(b),

14 [o]n motion and just terms, the court may relieve a party or its legal  
15 representative from a final judgment, order, or proceeding for the  
16 following reasons: (1) mistake, inadvertence, surprise, or excusable  
17 neglect; (2) newly discovered evidence that, with reasonable  
18 diligence, could not have been discovered in time to move for a  
19 new trial under Rule 59(b); (3) fraud (whether previously called  
intrinsic or extrinsic), misrepresentation, or misconduct by an  
opposing party; (4) the judgment is void; (5) the judgment has been  
satisfied, released, or discharged; it is based on an earlier judgment  
that has been reversed or vacated; or applying it prospectively is no  
longer equitable; or (6) any other reason that justifies relief.

20 Fed. R. Civ. P. 60(b).

21 As to Rule 60(b)(6), plaintiff “must demonstrate both injury and circumstances beyond his  
22 control that prevented him from proceeding with the action in a proper fashion.” *Harvest v.*  
23 *Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (citation and internal quotation marks omitted).  
24 Additionally, Rule 60(b)(6) “is to be used sparingly as an equitable remedy to prevent manifest  
25 injustice and is to be utilized only where extraordinary circumstances prevented a party from  
26 taking timely action to prevent or correct an erroneous judgment.” (*Id.*) (citation and internal  
27 quotation marks omitted).

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1 Plaintiff has failed to set forth facts or law that would satisfy any of the above-mentioned  
2 reasons for granting reconsideration. He explains that, at least in part due to the ongoing public  
3 health crisis, he has had difficulty accessing his medical records, difficulty accessing the law  
4 library, and difficulty obtaining the assistance of others within the prison that normally would  
5 help him with his legal filings. (*See generally* Doc. No. 18.) While the court is sympathetic to  
6 these logistical difficulties, they do not justify reconsideration of the court's January 8, 2021  
7 order. As the magistrate judge explained in a September 23, 2020 order granting plaintiff a  
8 substantial extension of time to file his objections to the then-pending findings and  
9 recommendations: "if Plaintiff needs a further extension of time to object because he is unable to  
10 get his medical records, Plaintiff must explain why he needs his medical records to respond to the  
11 findings and recommendations. The Court notes that Plaintiff does not need to submit evidence  
12 at this stage of the proceedings." (Doc. No. 15 at 1–2.) Nonetheless, plaintiff failed to timely  
13 request an additional extension and still has not explained why he required his medical records (or  
14 any of the other resources he claims to be having difficulty accessing) to address the deficiencies  
15 in his claims identified in the findings and recommendations.

16 Finally, plaintiff's objections request permission to add retaliation claims to this case,  
17 including claims alleging that he is being denied access to his medical records as a form of  
18 retaliation and/or to prevent him from being able to prosecute this lawsuit. (*See* Doc. No. 18 at  
19 1–2.) A motion for reconsideration is not an appropriate mechanism to advance such claims  
20 because plaintiff's underlying deliberate indifference claim has been dismissed and as such there  
21 is no longer an operative complaint for plaintiff to amend. " '[O]nce judgment has been entered  
22 in a case, a motion to amend the complaint can only be entertained if the judgment is first  
23 reopened under a motion brought under Rule 59 or 60.' " *Henry v. Adventist Health Castle Med.*  
24 *Ctr.*, 970 F.3d 1126, 1133 (9th Cir. 2020) (quoting *Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th  
25 Cir. 1996)).

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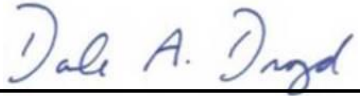
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1 For the reasons explained above, plaintiff's motion for reconsideration (Doc. No. 18) is  
2 denied. This case shall remain closed.

3 IT IS SO ORDERED.

4 Dated: **February 11, 2021**

  
UNITED STATES DISTRICT JUDGE